



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



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GOVERNOR

MICHAEL P. FLANAGAN
SUPERINTENDENT OF
PUBLIC INSTRUCTION

April 28, 2008

Memorandum

To: State Board of Education

From: Michael P. Flanagan 

Subject: Update on Federal Issues

Debate on Medicaid Regulations Moratorium Moves to Senate

Every other member of the Michigan Congressional Delegation supported House Committee on Energy and Commerce Chairman John D. Dingell (D-Dearborn) and his legislation, H.R. 5613 to place a moratorium until March 31, 2009, on seven Medicaid regulations, including one on School-Based Services, covering medical services for Medicaid-eligible special education students. The House of Representatives passed the measure on April 23 by a vote of 349-62, and it is expected to be taken up in the Senate during the week of April 28-May 2. The bill is viewed as having such strong momentum that Senate Majority Leader Harry Reid (D-Nevada) put the legislation directly on the Senate calendar, thus bypassing normal committee consideration.

The regulations were issued by the Centers for Medicare and Medicaid Services (CMS) in the Department of Health and Human Services ostensibly to protect the financial integrity of the Medicaid program and cover a broad range of Medicaid policy. Given the Congressional momentum, Kerry Weems, Acting Administrator of the CMS, has indicated that the administration would be open to changing some of the regulations. On Capitol Hill, inside sources suggested that the two items most likely to be selected for amending were Medicaid payments for graduate medical education, and intergovernmental transfer payments that states rely on to draw down federal Medicaid allocations. A broad national coalition of governors, doctors, hospitals, the education community, disability advocates, and public interest groups (please see attachment as example) have lobbied for the moratorium, but it is these two regulations that have the deepest interest behind them.

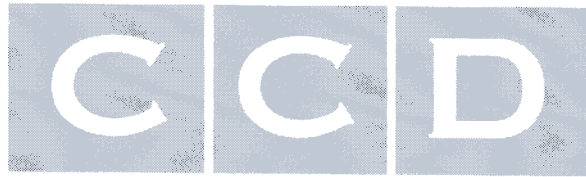
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Senator Charles Grassley (R-Iowa), Ranking Republican on the Senate Finance Committee, which oversees Medicaid, has emerged as the primary defender of the regulations. He maintains the regulations are necessary to ensure the financial integrity of Medicaid, and that the Congress cannot turn its back on fraud and abuse in the federal health care system, nor the states' misuse of Medicaid funds.

The administration has threatened a veto of the bill, but the House vote is veto-proof, and the bill drew support from some significant House leadership, including House Energy and Commerce Ranking Republican Joe Barton. Senate Democratic Leadership has suggested that the Senate will follow the House's lead, with a veto-proof vote. Michigan Senators Carl Levin and Debbie Stabenow are both co-sponsors of the comparable Senate Bill, S. 2819.



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

April 18, 2008

**The Honorable Harry Reid
Majority Leader
S-221 Capitol Building
Washington, D.C. 20510**

**The Honorable Mitch McConnell
Minority Leader
S-230 Capitol Building
Washington, D.C. 20510**

**RE: Stop Harmful Medicaid Rules on Rehabilitation, Targeted Case Management &
School-Based Services**

Dear Senator Reid and Senator McConnell:

With the Congress about to take up a FY 2008 supplemental appropriations bill and legislation to fix Medicare physician fees, the disability community is writing at a critical time. The undersigned members of the Consortium for Citizens with Disabilities (CCD) urge you to act swiftly either by attaching the bipartisan Rockefeller/Snowe Economic Recovery in Health Care Act (S.2819) or the bipartisan Protecting the Medicaid Safety Net Act of 2008 (H.R.5613) to either of these legislative vehicles and – in particular – to make every effort to stop the rehabilitation option, Targeted Case Management (TCM) and school-based services regulations recently promulgated by the Centers for Medicare & Medicaid Services (CMS).

CCD is a coalition of national disability organizations working together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

Medicaid services are a lifeline for vulnerable children and adults with disabilities. For people with significant developmental disabilities, the rehabilitation option's day habilitation programs allow them to maintain function and remain in the community. For those individuals with physical, mental, and developmental disabilities living in institutions, transitional case management assists them in moving from costly institutions to more cost effective settings in the community. For vulnerable youngsters in the child welfare system, Medicaid finances therapeutic foster care designed to provide intensive parental training and in-home support services to sustain children in the community and keep them out of 24 hour residential treatment facilities. For persons with severe mental illnesses, Medicaid funds assertive community treatment and psychiatric rehabilitation, which avert homelessness and impart basic living and social skills.

CMS's Institutional Bias: The rehabilitation, case management and school-based services state Medicaid options are essential components of federal and state efforts to maintain persons with disabilities in the community with their friends and families; the rehabilitation option alone serves 1.5 million Medicaid beneficiaries. By contrast, reducing all three of these programs by a combined total of \$6 billion over five years substantially detracts from other congressionally approved initiatives – specifically Money Follows The Person and the new Home and Community Based Services (HCBS) option – to serve persons with an array of physical and mental disabilities in settings other than nursing facilities, state operated psychiatric hospitals, intermediate care facilities for persons with mental retardation and related conditions (ICF/MRs) and emergency rooms. In fact, radically cutting funds to intensive community-based services seems to affirm the agency's strong institutional bias when operating outside of explicit congressional directives.

Rules Are Already Creating Chaos: The one rule that CMS is implementing in this area the case management regulation – is already creating chaos. In many states, the new TCM requirements impact numerous Medicaid waiver programs for persons with developmental disabilities, but the agency is unable to provide detailed compliance instructions. In this uncertain environment, financing for many TCM programs is being suspended, in turn, forcing community agencies to lay off trained case managers.

CMS Audits Appear To Violate APA: The results of the CMS state Medicaid audits – which supposedly provide the foundation for the three new rules – are in serious question. A careful review of CMS TCM and rehabilitative services state audits reveal brand new regulatory interpretations being enforced often years before the required notice and proposed rule making process – in apparent violation of the Administrative Procedures Act.

Finally, the unilateral nature of the administrative process along with the fiscal chaos created by a stunning array of new regulatory requirements has produced a bipartisan backlash from organizations as diverse as the National Governors Association, the National Association of State Medicaid Directors, the National Association of Counties, and the National Conference of State Legislatures.

For the past two years since the CMS regulatory wave began, CCD and its allies in the mental health, child welfare and HIV/AIDS communities have engaged in a dialogue about the rehabilitation services, case management and school-based services rules and believe that dialogue must continue. However, the moratoria are an essential first step to allow that dialogue to continue and give the Congress time to deliberate on these critical yet complex issues.

If you have any questions, please contact: Liz Savage, The Arc and United Cerebral Palsy Disability Policy Collaboration (202-783-2229- savage@thedpc.org), Kathy McGinley, National Disability Rights Network (202-408-9514, Kathy.McGinley@ndrn.org or Peter Thomas, ACCSES, (202-466-6550).

Thank you for your continuing leadership on policy issues of paramount importance to children and adults with disabilities.

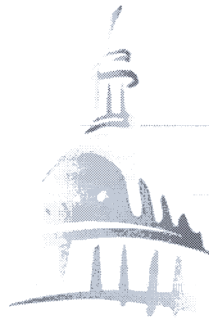
Sincerely,

Academy of Physical Medicine and Rehabilitation
ACCSES
ADAP Advocacy Association
American Foundation for the Blind
Alexander Graham Bell Association for the Deaf and Hard of Hearing
American Association of People with Disabilities
American Association on Intellectual and Developmental Disabilities
American Medical Rehabilitation Providers Association
American Music Therapy Association
American Network of Community Options and Resources
American Occupational Therapy Association
Association of University Centers on Disabilities
Autism Society of America
Bazelon Center for Mental Health Law
Brain Injury Association of America
Children and Adults w/Attention Deficit-Hyperactivity Disorder (CHADD)
Conference of Educational Administrators of Schools and Programs for the Deaf
Council for Exceptional Children
Council for Learning Disabilities
Council of State Administrators of Vocational Rehabilitation
Disability Rights Education and Defense Fund
Division for Early Children of the Council for Exceptional Children
Easter Seals
Epilepsy Foundation
Goodwill Industries International, Inc.
Helen Keller National Center
Higher Education Consortium for Special Education
IDEA Infant Toddler Coordinators Association
Mental Health America
National Alliance on Mental Illness
National Association of School Psychologists
National Association of Councils on Developmental Disabilities
National Association of County Behavioral Health and Developmental Disability Directors
National Association of County Behavioral Health and Developmental Disability Directors
National Association of Private Special Education Centers
National Association of Social Workers
National Association of State Directors of Special Education
National Association of State Directors of Developmental Disabilities Services
National Association of State Mental Health Program Directors
National Center for Learning Disabilities
National Coalition on Deaf-Blindness
National Council for Community Behavioral Healthcare
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society

National Multiple Sclerosis Society
National Organization of Social Security Claimants' Representatives
National Respite Coalition
TASH
Teacher Education Division of the Council for Exceptional Children
The Arc of the United States
Title II Community AIDS National Network
United Cerebral Palsy
World Institute on Disability
United Spinal Association
World Institute on Disability

*United States Senate
Committee on Finance*

<http://finance.senate.gov>
Press_Office@finance-rep.senate.gov



*Sen. Chuck Grassley · Iowa
Ranking Member*

**Floor Statement of U.S. Senator Chuck Grassley of Iowa
Ranking Member of the Committee on Finance
Medicaid Moratoriums Bill Moving in the House
Wednesday, April 16, 2008**

Today the House Energy & Commerce Committee is taking up consideration of HR5613. This bill seeks to place a moratorium on seven Medicaid regulations until the next Administration. I know some people have concerns with the CMS Medicaid regulations.

Let me be clear: I'm not here to argue the regulations are perfect. I have issues with some of them I'd like to see addressed. However, the regulations do address areas where there are real problems in Medicaid.

Mr. President, Medicaid is a federal-state partnership that provides a crucial health care safety net for some very vulnerable populations – low-income seniors, the disabled, pregnant women, and children. They depend on Medicaid, and it does generally serve them well.

Medicaid is also a program with a checkered history of financial challenges. That's the gentle way of putting it. A more severe way of putting it would be that Medicaid has a history of states abusively pushing the limits of what should be allowed to maximize federal dollars sent to them.

I'm not going to devote time in my remarks today to issues of fraud and abuse in Medicaid. I'll probably be back to do more on that later. Instead, I want to focus on a very simple concept: Medicaid program integrity depends on CMS and the states and providers and ultimately, beneficiaries having a clear understanding of the rules of the road. When states don't have clear guidance, they could be inappropriately spending taxpayer dollars. Improper payments and wasteful spending only increase the financial pressure on the safety net.

Mr. President, the Medicaid regulations HR5613 attempts to halt are efforts by CMS to provide clearer rules of the road in critical areas where there have been well documented problems. During the recent debate on the budget resolution, I entered into the record a CRS memo that showed some of the issues that exist under current law. I'm not going to go into them in detail today, but when CMS doesn't know how a state is billing for a service and states don't have clear guidance for how they should bill, neither Medicaid beneficiaries nor the taxpayers are well served.

We should be talking about fixing the regulations so they better address real problems in Medicaid, but instead the House is trying to kick the can to next year.

So what does that mean for the taxpayer? HR5613 spends \$1.7 billion to place moratoriums on the regulations. This is only to delay the regulations until the end of March of next year. I know supporters hope that the next administration will completely cancel the regulations. What would it cost if we tried to completely prevent these regulations from ever taking effect? Not \$1.7 billion that's for sure. It would actually cost the taxpayers almost \$20 billion over the next five years and almost \$50 billion over the next ten years.

It is an absolute farce for anyone to argue that all of those dollars are being appropriately spent and that Congress ought to just walk away from these issues. But that's what HR5613 does. Now I know supporters of that bill will say they just need more time. They say they haven't had enough time to study the regulations and respond.

That argument is starting to strain credibility. The public provider rule was proposed well over a year ago. The rehabilitation services rule was proposed nine months ago. Supporters of the bill have had plenty of time, if they wanted to make new policy. But it is obvious by their actions, their only real interest is making the regulations go away. This is unfortunate Mr. President, because finding solutions is what we should be doing. When we start talking about the integrity of the Medicaid program, clarity is what is most needed between CMS and the states. If you don't like the rules, fine. But there are ten of billions of taxpayer dollars involved. Roll up your sleeves and get to work solving the problems the regulations try to solve.

Mr. President, that's what we should be doing for the taxpayers. Putting moratoriums on all of the Medicaid regulations issues by CMS is not the right answer.